

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jess Guy Anscott,

Petitioner

v.

Brian Williams, et al.,

Respondents

2:13-cv-1833-JAD-VCF

**Order Denying Motion for Stay and
Abeyance**

[ECF No. 42]

Pro se state-prison inmate Jess Guy Anscott brings this § 2254 action to challenge his Nevada state-court conviction and sentence for possession of a stolen motor vehicle and resultant adjudication as a habitual criminal. On February 2, 2015, I granted in part and denied in part respondents' motion to dismiss the petition. Because I found that several grounds in Anscott's petition are unexhausted, I ordered Anscott to inform the court whether he wishes to proceed on only his exhausted claims or file a motion for stay and abeyance by April 18, 2015.¹

Anscott timely submitted a declaration of abandonment of his unexhausted claims,² and respondents filed an answer to the remaining claims in his petition.³ On the date that his extended deadline to file a reply to respondents' answer expired, Anscott submitted a motion for a stay and abeyance.⁴ A stay and abeyance is available only if the petitioner can show that there was good cause for his failure to first exhaust his claims in state court and that his unexhausted claims are not

¹ ECF No. 24. The deadline was originally March 4, 2015, but I granted Anscott's request to continue the deadline to April 18, 2015. ECF No. 26.

² ECF No. 29.

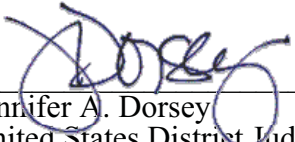
³ ECF No. 35.

⁴ ECF No. 42.

1 plainly meritless.⁵ Anscott notified the court more than 16 months ago that he was forever
2 abandoning his unexhausted claims and wishes to proceed on only his exhausted claims.⁶ And
3 Anscott's one-page motion does make any attempt to show that there was good cause for his failure
4 to first exhaust his unexhausted claims in state court or that his unexhausted claims are not plainly
5 meritless.⁷ Accordingly,

6 IT IS HEREBY ORDERED that Anscott's motion for stay and abeyance [ECF No. 42] is
7 **DENIED**, and Anscott's reply to the answer is due by October 6, 2016.

8 Dated September 6, 2016

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10 Jennifer A. Dorsey
11 United States District Judge
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23 ⁵ *Rhines v. Weber*, 544 U.S. 269, 277 (2005) (stating that “stay and abeyance is only appropriate
24 when the district court determines there was good cause for the petitioner’s failure to exhaust his
25 claims first in state court. [And] even if a petitioner [shows good cause], the district court would
26 abuse its discretion if it were to grant him a stay when his unexhausted claims are plainly
27 meritless.”).

27 ⁶ ECF No. 29.

28 ⁷ ECF No. 42 at 1.